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In re Application of
LOH

Application No.: 09/890,867
PCT No.: PCT/SG00/00012
Int. Filing Date: 31 January 2000
Priority Date: 02 February 1999
Attorney's Docket No.: 4890P001
For: METAL CASTING

DECISIONS ON PETITIONS

UNDER 37 CFR 1.181

This decision is in response to applicant's filing of 19 February 2004 in the United States Patent and Trademark Office (USPTO). The papers included a copy of papers purportedly filed on 25 September 2002. The papers are being treated as a petitions under 37 CFR 1.181. No petition fees are due.

BACKGROUND

On 12 August 2002, applicant was mailed a communication and notification of abandonment informing applicant that applicant had failed to respond to the NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 01 October 2001 within the time period set therein and that above-identified application was abandoned as to the United States..

On 13 August 2002, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909).

On 19 February 2004, applicant filed the present papers alleging that a response to the communication from the USPTO was filed on 25 September 2002 and requesting consideration of the petition. The papers are being treated as petitions under 37 CFR 1.181.

DISCUSSION

I. Petition Under 37 CFR 1.181 Regarding Showing of 25 September 2002 Filing

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of the date-stamped postcard receipt. The postcard identifies the application by filing date, docket number and identifies the application number as "09,860,867." Among the items listed on the receipt is "Response to Communication and Notification of Abandonment" The

receipt is stamped "OIPE JC109 Patent & Trademark Office SEP 25 2002" across its face. Thus, it is clear that applicant filed the response on 25 September 2002. Applicant has certified that the facsimile copy filed 19 February 2004 is a true and complete copy of the 25 September 2002 filing. Thus, it is proper to grant applicant's petition at this time and accept the copy filed 19 February 2004 as a timely response to the communication mailed 12 August 2002.

II. Petition Under 37 CFR 1.181 to Withdraw Holding of Abandonment

The Official Gazette, at 1156 OG 53, provides that a petition requesting relief based on the grounds that an Office action was not received must be accompanied by a statement that (1) the Office action was not received, (2) attests that a search of the file jacket indicates the Office action was not received, (3) attests that a search of counsel's docket records indicates the Office action was not received and (4) the Petition must also be accompanied by copies of the docket records where the non-received Office action would have been entered. (See also, Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

Applicant has satisfied items (1) and (3) above.

As to item (2), applicant has not provided a statement from counsel that a search of the file jacket indicates that the Office action was not received.

Regarding item (4), it is not clear from the docket records provided that the enclosed pages reflect where the purported non-received Office action would have been entered. It does not appear that the pages accurately reflect the docket system for the entire firm for 01 December 2001 but are merely an estimation of where an office action for the application in question would have been entered. In order to satisfy item (4) a copy of the firm's entire docket record for 01 December 2001 is required.

For the reason indicated above, it is not proper to grant applicant's petition at this time.

CONCLUSION

Applicant's petition under 37 CFR 1.181 as to proof of a 25 September 2002 filing is **GRANTED**.

The petition to withdraw holding of abandonment under 37 CFR 1.181 has been considered, however, for the reasons indicated above, the petition stands **DISMISSED** without prejudice and the application remains **ABANDONED**.

If reconsideration of the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.181." No additional fee is required.

Any renewed petition filed must include a proper reply. A proper reply must include a statement that a search of the file jacket indicates the Notification of Missing Requirements mailed 01 October 2001 was not received, as well as, a copy of the law firm's docket records as detailed above.

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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